

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 \* \* \* \* \*

4 SHEILA J. PORTER \*  
Plaintiff \*

5 VERSUS \*

CA-04-11935-DPW

6 ANDREA CABRAL \*  
7 Defendant \*

8 \* \* \* \* \*

9 BEFORE THE HONORABLE DOUGLAS P. WOODLOCK

10 UNITED STATES DISTRICT COURT JUDGE

11 HEARING

12 DECEMBER 15, 2005

13 APPEARANCES:

14 JOSEPH F. SAVAGE, JR., ESQ., Goodwin, Procter,  
15 Exchange Place, Boston, Massachusetts 02109,  
on behalf of the Plaintiff

16 DAVID S. SCHUMACHER, ESQ., Gadsby, Hannah, LLP,  
17 225 Franklin Street, Boston, Massachusetts 02110,  
on behalf of the Plaintiff

18 ELLEN CAULO, ESQ., Suffolk County Sheriff's  
Department, 200 Nashua Street, Boston,  
19 Massachusetts 02114, on behalf of the Suffolk  
County Sheriff's Department, Defendant

20 PAIGE A. SCOTT REED, ESQ., Prince, Lobel,  
21 Glovsky & Tye, LLP, 585 Commercial Street,  
Boston, Massachusetts 02109, on behalf of the  
22 Suffolk County Sheriff's Department, Defendant

23 ALEXANDRA B. HARVEY, ESQ., Adler, Cohen, Harvey,  
24 Wakeman & Guekquezian, LLP, 75 Federal Street,  
10th Floor, Boston, Massachusetts 02110, on  
25 behalf of Correctional Medical Services (CMS),  
Inc., Defendant

1 APPEARANCES (Continued):

2 ANTON P. GIEDT, ESQ. AND JOHN T. McNEIL, ESQ.,  
3 Assistant United States Attorneys, United States  
4 Attorney's Office, 1 Courthouse Way, Suite 9200,  
5 Boston, Massachusetts 02210, on behalf of the  
6 FBI and United States Attorney's Office,  
7 Respondents  
8  
9  
10  
11  
12

13 Courtroom No. 22 - 7th Floor  
14 1 Courthouse Way  
15 Boston, Massachusetts 02210  
16 2:35 P.M. - 4:40 P.M.  
17  
18

19 Pamela R. Owens - Official Court Reporter  
20 John Joseph Moakley District Courthouse  
21 1 Courthouse Way - Suite 3200  
22 Boston, Massachusetts 02210

23 Method of Reporting: Computer-Aided Transcription  
24  
25

1 mean? What are you --

2 MS. CAULO: Well, it gets around again to the  
3 credibility of --

4 THE COURT: Oh, yeah. Well, everything gets  
5 around to the credibility. I suppose we could start  
6 with depositions of her kindergarten teacher. The real  
7 issues is whether or not it's something that I'm going  
8 to permit you to muck around in. And, so, it's got to  
9 be in some fashion relevant to the case and material to  
10 the case.

11 Now, the case, as I understand it, is whether  
12 or not a substantial motivating factor for the barment  
13 of Ms. Porter was her cooperation with the FBI. That's  
14 the core of it. How does this affect that?

15 MS. CAULO: Well, in terms of the analysis  
16 that that is going to undertake, part of that analysis,  
17 I would suggest, is the balancing of the competing  
18 interests of the 1st Amendment right to speak.

19 THE COURT: No. This is relevance to the  
20 case.

21 MS. CAULO: Well, what's relevant to the case  
22 here --

23 THE COURT: You know, whether she was giving  
24 the FBI good information, bad information, inconsistent  
25 information, or anything in between, the core of the

1     barring, again for the purposes of impeachment and  
2     whether or not she --

3             THE COURT: Well, do you have a basis for  
4     believing that it's inconsistent with something that she  
5     said in her memo to file or otherwise?

6             MR. SCHUMACHER: Your Honor, not beyond what  
7     we've already talked about today, the fact that her  
8     Chief of Staff gave different reasons at that meeting  
9     and indeed if the Sheriff sat by while her Chief of  
10    Staff gave reasons that were inconsistent with what her  
11    reasons were for the barring, then it would be an  
12    adopted admission, Your Honor, and we didn't disagree.

13            MR. SAVAGE: Can I speak to him?

14            THE COURT: Yes.

15            MR. SCHUMACHER: In addition, Your Honor, in  
16    the correspondence, Mr. Sullivan indicated that Ms.  
17    Cabral mischaracterized actually what transpired at that  
18    meeting. That letter is Exhibit 12 to the opposition.

19            THE COURT: So this becomes a case about  
20    meetings that are had and inconsistencies in the  
21    meetings as opposed to what transpired or what the cause  
22    of the debarment was or barment.

23            MR. SCHUMACHER: I don't think so, Your Honor.  
24    We're certainly focused on the latter, on what was the  
25    reason for the barment. And we obviously can't get

1 CMS to be kept in this case any longer. The contract  
2 claims are attenuated. The effort to draw them into  
3 civil rights claims, it seems to me, are inappropriate.  
4 The core of the case, as I've indicated, is a 1983 1st  
5 Amendment case. That's what it's all about.

6 I will hear some argument with respect to the  
7 defamation claim. I do think that the intentional  
8 interference with contractual relationships stays in  
9 here. That's a private version of the 1983 case against  
10 the defendant. But I don't see that CMS can be kept in  
11 here on the basis of the submission that they have  
12 made here. Do I think that it's beyond the bounds of  
13 pleading for purposes of Rule 11? No. I think it is  
14 possible to conceive of the legal theories in the  
15 fashion that the plaintiff did. And I gave some thought  
16 because, as I said, it was pressing the envelope to  
17 leaving CMS in this case to perhaps develop the law more  
18 clearly. But I don't think that it is appropriate when  
19 the law seems to me so clear and the sufficiency of the  
20 evidence adduced so inadequate to permit the case to go  
21 forward against CMS. And, so, for those reasons, I'm  
22 going to dismiss as to CMS and grant the motion for  
23 summary judgment.

24 Now, for purposes of this discussion, I want  
25 to understand what the Sheriff's office view is of this.

1 THE COURT: Best left unexplored at this  
2 point.

3 MS. CAULO: I think things are complicated  
4 enough here.

5 THE COURT: But isn't that it?

6 MS. CAULO: Yes.

7 THE COURT: All right. Let me be clear. I  
8 mean, I said ahead of time.

9 As far as I'm concerned, there is a genuine  
10 issue of material fact with respect to the reasons why  
11 Sheriff Cabral barred Ms. Porter. And one reading could  
12 be one that we all agree is a constitutional violation.  
13 Whether or not the jury is going to agree about that is  
14 another matter, not something I'm making a determination  
15 about. I'm simply making an inquiry whether or not  
16 there is enough to go forward. And I find that there  
17 is.

18 Now, with respect to the question of  
19 intentional interference with contractual relations, is  
20 there anything else to be said about that? It's simply  
21 a common law version of 1983 in this context, isn't it?  
22 Once I've found that there's sufficient evidence to go  
23 forward on 1983, it's enough to go forward on that,  
24 isn't it?

25 MS. CAULO: I think not. There's no contract

1 that will necessarily result in Ms. Porter's termination  
2 of that relationship.

3 THE COURT: Okay. But just so I'm clear, is  
4 there case law somewhere that says that one can  
5 interfere with an at-will employee's relationship at  
6 will? Is there some case law that says something like  
7 that? I'm not aware of it.

8 MS. CAULO: I'm not aware of it.

9 THE COURT: Okay. Do you want to be heard on  
10 this, Mr. Savage?

11 MR. SAVAGE: Well, Your Honor, only to cite  
12 their own brief, that this is all about advantageous  
13 relationships -- there's no requirement in the contract  
14 -- and that the relationship here was the one of "For  
15 nine years, I have come to the House of Correction  
16 and now you've barred me and that has disrupted an  
17 advantageous relationship."

18 THE COURT: Now, you'll agree with me that if  
19 there is no other evidence that is adduced as to this,  
20 then what would be adduced as to the 1983, that is  
21 essentially duplicative of 1983, maybe different  
22 damages, but --

23 MR. SAVAGE: I think that -- for the purposes  
24 of today, without reflecting on it anymore, I think  
25 that's right.

1 Mr. Savage, if you want to --

2 MR. SAVAGE: I just wondered if the Court had  
3 addressed the whistleblower statute.

4 THE COURT: Wrong employer here. I mean, I've  
5 read the articles. Yes.

6 MR. SAVAGE: Okay.

7 THE COURT: I understand the --

8 MR. SAVAGE: If I could just --

9 THE COURT: -- briefings, I should say.

10 MR. SAVAGE: -- clarify one thing that Ms.  
11 Caulo said. If the Court hasn't recently, if you look  
12 at that Boston Globe Magazine article --

13 THE COURT: I'm going to go back and look at  
14 it.

15 MR. SAVAGE: The Porter thing is mentioned  
16 seriatim in the group of things that are referred to as  
17 a group. That's how it's --

18 THE COURT: Right. As I said, I'm uncertain  
19 about it. I'm not yet -- I haven't come to rest on my  
20 view about it. I'll look at it some more.

21 How long a trial? How long a trial?

22 MR. SAVAGE: Eight days. Does that sound  
23 right? We haven't talked about it, Your Honor. I don't  
24 know. I mean, obviously, with some versions of what you  
25 said today, this might be an afternoon.

101

1 THE COURT: Right. No, I don't think -- well,  
2 I wouldn't mind that, but I don't think that's --

3 MR. SAVAGE: That's my best estimate as we sit  
4 here.

5 THE COURT: Okay. When?

6 MR. SAVAGE: When? Shortly after the Court  
7 rules, we'll --

8 THE COURT: The Court has ruled on the basic  
9 parts of this.

10 MR. SAVAGE: All right. We're good to go.

11 THE COURT: January?

12 MR. SAVAGE: Fine. Well, I got one. I assume  
13 Judge Saris is going to enter an order continuing my  
14 trial that's set for January 9th in front of her  
15 tomorrow. So I'll know that. But then I could -- I'm  
16 ready to go January 9th because I think I will not be in  
17 front of Judge Saris on that day.

18 THE COURT: Okay.

19 MS. CAULO: I suppose it depends on when in  
20 January, Your Honor.

21 THE COURT: Well, January 9th or the 16th,  
22 either one. I mean, this strikes me -- apart from all  
23 of the very interesting stuff that people want to do  
24 more discovery on, this strikes me as a pretty core kind  
25 of case. I'll think about the defamation, but it's

1 really a question of whether or not a 1st Amendment  
2 violation was a significant factor in this, a motivating  
3 factor.

4 MS. CAULO: I would certainly need to discuss  
5 with my clients and the witnesses their availability.  
6 Having said that, you know --

7 THE COURT: Look, I have time now to do this.  
8 A case just fell through. I'm not -- this isn't a test  
9 of manhood or womanhood to see if you can rise to the  
10 occasion and try it in a short time. But I've got the  
11 time and I'm prepared to do it.

12 So, I suggest that you consult with your  
13 clients and check about your witnesses in this case.  
14 But I'm prepared to try it starting on the 9th. I  
15 understand that there's a potential supervening issue  
16 with Judge Saris' case, but I have a sense that that  
17 might be moved here without knowing anything else.

18 All right.

19 MR. SAVAGE: Thank you, Your Honor.

20 THE COURT: So you'll get back to Ms. Rynne.  
21 I think by Monday, I want to know. And if it's not  
22 possible, I want it to be very specific why it isn't  
23 possible to do that. But I will not put anything else  
24 in for the 9th and the 16th as a result.

25 MS. CAULO: For either of those two days?